

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RICARTE S. AGUILAR, JR.,

Plaintiff,

-against-

KIRSCHENBAUM & PHILLIPS PC,

Defendant.

VERIFIED COMPLAINT and DEMAND
FOR JURY TRIAL

(SI)
CV - 11 1085

NOW COMES Plaintiff, Ricarte S. Aguilar, Jr. ("Plaintiff"), by and through his attorneys, Krohn & Moss, Ltd., for his Verified Complaint against Defendant, Kirschenbaum & Phillips PC, ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

Parties

2. Plaintiff is a natural person residing in Setauket, Suffolk County, New York.
3. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).
4. Defendant is a company conducting business in the state of New York.
5. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.
6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

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Jurisdiction and Venue

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

8. Because Defendant is principally located in the state of New York, and conducts business in New York, personal jurisdiction is established.

9. Venue is proper pursuant to 28 U.S.C. §1391(b)(1) and (b)(2).

Factual Allegations

10. Beginning in November of 2010, Defendant constantly and continuously placed collection calls to Plaintiff seeking and demanding payment for an alleged debt owed to Bank of America.

11. Since November of 2010, Defendant called on an almost daily basis, multiple times per day, through January of 2011.

12. Defendant contacted Plaintiff up to five (5) times in a single day.

13. Defendant called from its phone numbers (516) 780-7367 and (516) 746-1144 to Plaintiff’s home, cellular, and work phone numbers.

14. On multiple occasions Plaintiff spoke with Defendant’s representative named “Deedu.”

15. Plaintiff told Defendant on multiple occasions that he was not allowed to take personal calls at work and repeatedly requested that Defendant stop contacting him at his place of employment.

16. Despite this information, Defendant continued to contact Plaintiff at his place of employment.

17. In addition, Defendant threatened to put a lien on Plaintiff's house.

CLAIM FOR RELIEF

18. Defendant's violations of the FDCPA include, but are not limited to, the following:

- a. Defendant violated §1692c(3) of the FDCPA by contacting Plaintiff at his place of employment when Defendant knew or had reason to know that Plaintiff's employer prohibited said phone calls;
- b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress or abuse Plaintiff in connection with the collection of a debt;
- c. Defendant violated §1692d(5) of the FDCPA when Defendant caused Plaintiff's telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff;
- d. Defendant violated §1692e of the FDCPA by using false, deceptive and misleading representations in connection with the collection of the alleged debt including but not limited to threatening to lien Plaintiff's property.
- e. Defendant violated §1692e(4) of the FDCPA by threatening to put a lien on Plaintiff's property.

19. Plaintiff is entitled to his attorney's fees and costs incurred in this action.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k;
- (2) Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and

(3) Awarding such other and further relief as may be just, proper and equitable.

Dated: February 17, 2011

KROHN & MOSS, LTD.

By: 

Adam T. Hill

KROHN & MOSS, LTD.

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Chicago, Illinois 60602

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Attorney for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Ricarte S. Aguilar, Jr., hereby demands a jury trial in this matter.

VERIFICATION

STATE OF NEW YORK)

:ss.:

COUNTY OF SUFFOLK)

Plaintiff, Ricarte S. Aguilar, Jr., being duly sworn, deposes and says:

1. I am the Plaintiff in this civil proceeding;
2. I have read the foregoing Verified Complaint prepared by my attorneys and I believe that all of the facts contained therein are true and correct, to the best of my knowledge, and formed after reasonable inquiry;
3. I believe that this civil Complaint is well ground in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law;
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.

Pursuant to 28 U.S.C. § 1746(2), I, Ricarte S. Aguilar, Jr., hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 2.4.2011



Ricarte S. Aguilar, Jr.